

**IN THE CIRCUIT COURT OF BENTON COUNTY  
STATE OF MISSOURI**

STATE OF MISSOURI ex rel.	)	
JEREMIAH W. (JAY) NIXON, the	)	
CLEAN WATER COMMISSION,	)	
SAFE DRINKING	)	
WATER COMMISSION, and the	)	
MISSOURI DEPARTMENT OF	)	
NATURAL RESOURCES,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 05BE-CC00040
	)	
BARRY HURST, GLEN BAIN and	)	
IRMA BAIN	)	
	)	
Defendants.	)	

Please serve:

Barry Hurst  
33209 Highway 82  
Cookson, Oklahoma 74427

Glen or Irma Bain  
115611 Terry Avenue  
Belton, Missouri 64012

**PETITION FOR PRELIMINARY INJUNCTION,  
PERMANENT INJUNCTION AND CIVIL PENALTIES**

COMES NOW, plaintiff, State of Missouri, at the relation of Jeremiah W. (“Jay”) Nixon, Attorney General of Missouri, the Missouri Clean Water Commission, the Missouri Safe Drinking Water Commission, and the Missouri Department of Natural Resources, and for their Petition state and aver as follows:

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri. The Attorney General is authorized to institute, in the name and on behalf of the state, all civil proceedings at law or in equity necessary to protect the rights and interests of the state under § 27.060, RSMo.

2. The Missouri Department of Natural Resources ("the Department") is a state agency created by § 640.010, RSMo., and is charged with the duty of administering the programs assigned to the Department relating to environmental control. The Safe Drinking Water Commission, under the auspices of § 640.105 RSMo promulgates rules necessary for the implementation, administration and enforcement of the Missouri Safe Drinking Water Law, §§ 640.100, RSMo - 640.140, RSMo. The Clean Water Commission of the State of Missouri, under the auspices of § 644.021 RSMo, supervises the administration and enforcement of the Missouri Clean Water Law, §§ 644.006 - 644.150, RSMo

3. Glen and Irma Bain reside in Belton, Missouri.

4. Barry Hurst resides in Cookson, Oklahoma.

### **JURISDICTION AND VENUE**

5. This suit concerns violations of the Missouri Clean Water Law, §§ 644.006, RSMo, *et. seq.* and the Missouri Safe Drinking Water Law, §§ 640.100, RSMo, *et. seq.*, on real property located within the confines of Benton County, Missouri.

6. That this Court has jurisdiction in this action, and venue is proper herein pursuant to § 640.130.2, RSMo and § 644.076.1, RSMo, in that the public water supply system and the wastewater treatment facility are both situated in Benton County, Missouri.

## **COUNT I -- VIOLATIONS OF THE MISSOURI DRINKING WATER LAW**

### **CREATION OF THE SUBDIVISION**

7. In 1988, a tract of land near Clinton, in Benton County, Missouri, was deeded to Glenn Bain and Irma Bain, as husband and wife, and Barry Hurst. This tract of land is more specifically described in the true and correct copy of the deed that transferred the property, attached hereto as Exhibit 1, and incorporated herein by this reference.

8. This property will hereinafter be referred to as “the Subdivision” and includes the following housing developments: Sun Valley, Sunny Slope, Tebo Flats, Eastwood, Westwood, Cedar Flats, and Sunny Hills.

9. Defendants Glenn Bain, Irma Bain and Barry Hurst subdivided and developed the Subdivision for sale to residential home owners.

10. Defendants Glenn Bain, Irma Bain and Barry Hurst platted the Subdivision for over 100 lots as part of their common development plan. Currently, the Subdivision consists of approximately 40 homes. A true and correct copy of the plat map of the Subdivision is attached hereto as Exhibit 2, and is incorporated herein by this reference.

## CONSTRUCTION OF THE WATER WELLS

11. In 1987, at the behest and direction of the defendants, a water well was drilled in the Subdivision. A true and correct copy of the Water Well Record is attached hereto as Exhibit 3, and is incorporated herein by this reference. This well is identified as "Well 1" on the attached plat map. The depth of this well is 580 feet and the well is cased by 6-inch diameter plastic.

12. In November 2002, at the behest and direction of the defendants, a second water well was drilled in the Subdivision. This well is identified as "Well 2" on the attached plat map. No depth, casing or pump information is available for this well.

13. These two wells are the source for piped water for the more than 40 households in the Subdivision, but they do not meet minimum construction standards for community public water supply wells set in the Missouri Safe Drinking Water Law.

## SUPPLIERS OF WATER

14. Each of the two wells were drilled at the behest and direction of the defendants as part of the common plan of development of the Subdivision.

15. As part of the defendants' common plan of development of the Subdivision, they formed the entity known as "Sun Valley" in September 1994 for the purpose of providing "community services for the residents of the Sun Valley and adjoining development." A true and correct copy of the Secretary of State's filed documents summary is attached hereto as Exhibit 4, and is incorporated herein by this reference. A

true and correct copy of the final annual registration report of Sun Valley is attached hereto as Exhibit 5, and is incorporated herein by this reference.

16. As the map of the Subdivision indicates, Well 1 is located at the extreme southeast corner of the Subdivision, and Well 2 is located at the extreme northeast corner of the Subdivision. The land on which each well is located is owned by Barry Hurst.

17. On March 20, 2004, Mr. Hurst and Mr. Bain met with Department representatives. During this meeting, Mr. Hurst indicated that he still owned the property where both wells were drilled.

18. During this meeting on March 20, 2004, Mr. Bain advised the Department representatives that he and Mr. Hurst told homeowners in the Subdivision that he and Mr. Hurst were committed to drilling a second well to supplement the first well.

19. 10 CSR 60-2.015 defines an “operator” as “[a]ny individual who operates or determines the methods of operating a water system, either directly or by order.”

20. 10 CSR 60-2.015 defines a “supplier of water” as “[a]ny person who owns, controls or operates a public water system.”

21. As Well 1 and Well 2 were drilled at the behest and direction of the defendants as part of the defendants’ common development plan for the Subdivision, and as the defendants exerted control over the construction of Well 1 and Well 2, the defendants are suppliers of water as contemplated in 10 CSR 60-2.015.

## PUBLIC DRINKING WATER VIOLATIONS

22. § 640.115, RSMo, provides that every individual who supplies drinking water to the public shall file copies of the plans of the waterworks and its treatment technologies, and that no source of supply shall dispense water to the public without a written permit of approval.

23. § 640.120 and § 640.125, RSMo, provide that water systems shall be periodically tested for contaminants and the results of those tests shall be reported to the Department of Natural Resources.

24. No permit was ever issued authorizing the defendants to dispense water to the public from Well 1 or Well 2, as required by § 640.115, RSMo.

25. The Department has inspected the public water system and found that the system is in violation of the Missouri Safe Drinking Water Law in the following additional respects:

A. Defendants have failed to apply for and receive a permit to construct a public water supply, for either Well 1 or Well 2 or the distribution system, even though the system has more than three service connections each, in violation of § 640.115, RSMo, 10 CSR 60-3.010, and 10 CSR 23-1.030(5);

B. Defendants have failed to sample for microbiological contaminants at either Well 1 or Well 2, in violation of 10 CSR 60-4.020;

C. Defendants have failed to sample for Inorganic Chemical Contaminants at either Well 1 or Well 2, in violation of 10 CSR 60-4.030;

D. Defendants have failed to sample for Synthetic Organic Chemical Contaminants at either Well 1 or Well 2, in violation of 10 CSR 60-4.040;

E. Defendants have failed to sample for Radiological Contaminants at either Well 1 or Well 2, in violation of 10 CSR 60-4.040;

F. Defendants have failed to provide Public Notice for monitoring violations at either Well 1 or Well 2, in violation of 10 CSR 60-8.010;

G. Defendants have failed to provide any yearly Consumer Confidence Reports for either Well 1 or Well 2, in violation of 10 CSR 60-8.030);

H. Defendants have failed to sample for lead and copper in tap water at either Well 1 or Well 2, in violation of 10 CSR 60-15.080.

26. Notices of Violation have been issued to address these violations.

27. Notice of Violation (NOV) 2331KC, was issued April 8, 2005 regarding monitoring violations. A true and correct copy of NOV 2331KC is attached hereto as Exhibit 6, and is incorporated herein by this reference.

28. Notice of Violation (NOV) 2301KC, was issued October 26, 2004 regarding monitoring violations. A true and correct copy of NOV 2301KC is attached hereto as Exhibit 7, and is incorporated herein by this reference.

29. Notice of Violation (NOV) 2293KC, was issued October 7, 2004 regarding monitoring violations. A true and correct copy of NOV 2293KC is attached hereto as Exhibit 8, and is incorporated herein by this reference.

30. Neither Well 1 nor Well 2 are currently permitted to dispense water.

31. § 640.130, RSMo, authorizes the State of Missouri to institute an action to obtain injunctive relief and civil penalties.

32. Defendants' conduct has caused irreparable harm, or the potential for irreparable harm, through violations of the Missouri Safe Drinking Water Law and its supporting regulations.

33. Plaintiffs have no adequate remedy at law other than to pursue the injunctive relief and civil penalties authorized by the Missouri Safe Drinking Water Law.

WHEREFORE, plaintiffs request judgment against defendants in the following respects:

A. Find that the defendants violated the Missouri Safe Drinking Water Law and its implementing regulations as alleged in this Petition.

B. Issue a preliminary and permanent injunction against defendants enjoining them from dispensing drinking water to the public, until such time as an application for permit has been approved by the Department of Natural Resources. In addition, Plaintiffs request a preliminary and permanent injunction requiring defendants to provide monthly samples for water contaminants for each month the drinking water supply is in operation.



C. Issue preliminary injunctive relief to protect the public health, safety and welfare by ordering defendants:

- i. To conduct weekly microbiological monitoring and sampling from the distribution system and from each well source;
- ii. To conduct quarterly chemical and inorganic monitoring and sampling from the distribution system and from each well source;
- iii. To conduct immediate and periodic lead and copper monitoring and sampling from the distribution system and from each well source;
- iv. To provide all test results within 24 hours to the Missouri Safe Drinking Water Program;
- v. To employ a certified Missouri engineer to produce a technical report describing all necessary improvements required before the public water system meets minimum standards set by the Missouri Safe Drinking Water Law;
- vi. To employ a certified Missouri engineer to produce all necessary pre-design studies, as well as technical plans and specifications, that will meet minimum standards set by the Missouri Safe Drinking Water Law;
- vii. To submit a complete application for a construction permit, as described in 10 CSR 60-3.010, before beginning any construction or modification of the existing system;

viii. To construct a sufficient number of community public water supply wells, in accord with minimum standards set forth in the Missouri Safe Drinking Water Law, to meet the public drinking water needs of the entire Subdivision;

ix. To meet all pre-design and pre-construction requirements, including obtaining all necessary permits, before beginning construction on any such wells as described in parts vi, vii, and viii;

x. To properly abandon, plug, and permanently close any and all existing wells that do not meet minimum standards of the Missouri Safe Drinking Water Law in accord with those regulations and requirements of the Geologic Survey and Resource Assessment Division of the Department as defined in 10 CSR 23-3.110.

D. Assess against the defendants a civil penalty of Fifty Dollars (\$50.00) per day for the first violation and One Hundred Dollars (\$100.00) per day for the second violation and for each violation thereafter of the Missouri Drinking Water Law and regulations and order defendants to pay said sum to the “Benton County Treasurer as Trustee for the Benton County School Fund.”

E. Assess against defendants all costs in these proceedings.

F. Grant such further relief as this Court deems just and proper.

## **COUNT II -- VIOLATIONS OF THE MISSOURI CLEAN WATER LAW**

34. Plaintiffs reallege and incorporate as though fully set forth herein the allegations and averments contained in paragraphs 1 through 33 above.

35. Defendants are the developers and owners of the property in Benton County, Missouri, known as Sun Valley Subdivision (the “Subdivision”), which includes but is not limited to the following developments: Sun Valley, Sunny Slope, Tebo Flats, Eastwood, Westwood, Cedar Flats, and Sunny Hills. The Subdivision has been platted for over 100 lots. Currently, the Subdivision consists of approximately 40 homes of which an unknown number are served by failing onsite septic systems and an unknown number are served by an unpermitted, failing two-cell wastewater lagoon (“lagoon”). The lagoon, which drains into an unnamed tributary of Truman Lake, is located at NW ¼ of Section 31, Township 41N, Range 23W, Benton County, Missouri.

### **THE CONSTRUCTION PERMIT**

36. On December 21, 1994, the Department issued construction permit No. 26-2018 (the “construction permit”) for construction of a collection system and a wastewater treatment system at the Subdivision, including two aerated lagoons, with a design flow of 25, 200 gallons per day serving a population equivalent of 336. The construction permit was to expire on December 21, 1995 but the Department later extended the construction permit to October 15, 1998.

## PERMIT VIOLATIONS

37. 10 CSR 20-6.030, *Disposal of Wastewater in Subdivisions*, states that the developer(s) of any residential housing development shall obtain approval from the Department for the proposed method of sewage treatment and disposal to be used in the development prior to the sale or lease of any lot, or the commencement of construction on any lot, by the developer or any other person.

38. 10 CSR 20-6.010, *Construction and Operating Permits*, requires that persons building any water contaminant source submit an engineer's certification, in writing, that confirms the project has been completed in accordance with Department-approved plans and specifications.

39. Two-cell lagoons, such as the kind constructed at the Subdivision, 10 CSR 20-8.020, *Design of Small Sewage Works*, require a minimum detention time in the first lagoon cell of 44 days and a minimum detention time in the quiescent cell of 2-10 days.

40. Defendants meet the definition of "developer(s)" as that term is defined in 10 CSR 20-6.030, in that defendants, directly and indirectly, sold or leased or offered to sell or lease lots in the Subdivision, and are not licensed brokers or licensed salesmen who are not shareholders, directors, officers or employees of a developers and who have no legal or equitable interest in the land.

41. The lagoon is a "water contaminant source" as defined in Missouri Clean Water Law § 644.016 (24), RSMo.

42. Defendants have subdivided property at the Subdivision and have sold lots prior to having a Department-approved centralized sewer system in place, in violation of 10 CSR 20-6.030 (D).

43. Defendants have failed to construct the Subdivision's collection system and wastewater treatment system in accordance with the construction permit, and have failed to submit a written engineer's certification documenting that the Subdivision's collection and wastewater treatment systems have been completed in accordance with Department-approved plans and specifications, thus violating 10 CSR 20-6.010 (5) (D).

44. The engineer's certification, referenced above in paragraph 43, was required to have included as-built drawings for the Subdivision's collection and wastewater treatment systems as well as calculations showing the expected detention time in each lagoon cell, actual wastewater inflow, and potential wastewater inflow so that the lagoon cells as constructed can be checked for compliance with 10 CSR 20-8.020 (13) (A).

45. During on-site inspections of June 18, 2001, and October 3, 2001, Department staff observed the following:

A. That aerators had not been installed in the first lagoon, as called for in the construction permit;

B. That construction of the second lagoon had not begun, as called for in the construction permit;

C. That the engineer's certification for the Subdivision's collection and wastewater treatment systems had not been submitted.

46. As a result, on January 4, 2002, the Department issued Notices of Violation ("NOV's") No. 1956JC and 1957JC to defendants Bain and Hurst, true and correct copies of which are attached hereto, incorporated herein and marked Exhibit 9 and Exhibit 10.

#### VIOLATIONS OF THE MISSOURI CLEAN WATER LAW

47. § 644.076.1, RSMo, provides that it is unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of §§ 644.006-644.141, RSMo, or any standard, rule or regulation promulgated by the Commission.

48. §§ 644.051.1 (1) and 644.076.1, RSMo, make it unlawful for any person to cause pollution to any waters of the state or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution to any waters of the state.

49. §§ 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010 (1) (A) and (5) (A) prohibit any person from discharging a water contaminant from a water contaminant source into waters of the state without a Missouri State Operating Permit ("MSOP") from the Commission, and then only in accordance with standards set by the permit and the Missouri Clean Water Law and Regulations.

50. On or about November 13, 2002, defendants attempted to remove some of the cattails at the lagoon by dousing them with gasoline and then igniting them, causing a release of gasoline.

51. Waste from defendants' lagoon as well as the gasoline defendants placed in the lagoon are "water contaminant(s)" as defined in § 644.016 (23) that have the potential to alter the physical, chemical or biological properties of the receiving waters and thereby cause "pollution," as defined in § 644.016 (16), RSMo.

52. The unnamed tributary to Truman Lake constitutes "waters of the state" as defined in § 644.016 (26), RSMo.

53. Since at least September 26, 2000, defendants have unlawfully permitted the discharge of water contaminants (wastewater) from the lagoon, a water contaminant source, in violation of § 644.076.1, RSMo.

54. Defendants' unlawful discharge of water contaminants to the unnamed tributary of Truman Lake caused pollution to waters of the state and that defendants, on numerous occasions, placed or permitted to be place, water contaminants—including wastewater and gasoline—in a location where said water contaminants were reasonably certain to cause pollution to waters of the state in violation of §§ 644.051.1 (1) and 644.076.1, RSMo.

55. Since at least September 26, 2000, defendants have operated the lagoon and have allowed the illegal discharge of wastewater into the unnamed tributary of Truman

Lake without a permit in violation of §§ 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010 (1) (A) and (5) (A). As of the date of filing this petition, defendants still have not obtained a permit.

56. Site inspections by Department staff on September 26, 2000, April 24, 2002, and June 25, 2002 revealed that defendants were operating a water contaminant source (wastewater) that discharged to an unnamed tributary of Truman Lake, waters of the state, without a permit.

57. Department staff inspected defendants' lagoon on November 13, 2002 to evaluate work done in response to the September 25, 2002 NOV's. Defendants continued to operate the lagoon without a permit. As a result of the violations described in paragraphs 47 through 57, the Department issued additional NOV's to defendants Bain and Hurst; NOV 2099JC was issued on September 25, 2002, and NOV's 2183JC and 2184JC were issued on November 26, 2002. True and correct copies of these NOV's are marked, attached hereto, and incorporated herein as Exhibits 11, 12, and 13.

58. § 644.076, RSMo, authorizes this Court to impose civil penalties of Ten Thousand Dollars (\$10,000.00) per violation per day for each day, or part thereof, that defendants violated the Clean Water Law.

59. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs request that this Court enter judgment against the defendants and order the following relief:



A. Find that the defendants violated the Missouri Clean Water Law and its implementing regulations as alleged in this Petition.

B. Issue a preliminary and permanent injunction against defendants enjoining them to submit a signed and sealed engineer's certification documenting that the Subdivision's collection and wastewater treatment systems have been completed in accordance with the requirements and design specifications contained in construction permit No. 26-2018. This engineer's certification must include as-built drawings for the Subdivision's collection and wastewater treatment systems, calculations showing the expected detention time in each lagoon cell, actual wastewater inflow and potential wastewater inflow. The engineer's certification must adequately document that the Subdivision's collection and wastewater treatment systems are designed and constructed to treat wastewater inflow from all potential connections.

C. In the event that the Subdivision's collection and wastewater treatment systems have not been completed in accordance with the requirements and design specifications contained in construction permit No. 26-2018, to issue a preliminary and permanent injunction against defendants enjoining them to: (1) submit a signed and sealed engineer's report characterizing the collection and wastewater treatment systems—as built—that are currently in place at the Subdivision; (2) apply for a construction permit that meets Department-approved plans and specifications for the construction of adequate collection and wastewater treatment systems in the Subdivision; and (3) construct a collection

system and a wastewater treatment system at the Subdivision according to the Department-approved construction permit.

D. Assess against the defendants a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation of the Missouri Clean Water Law and regulations and order defendants to pay said sum to the “Benton County Treasurer as Trustee for the Benton County School Fund.”

E. Issue a preliminary and permanent injunction against the defendants enjoining them to comply with the Missouri Clean Water Law, its implementing regulations and, more specifically, to obtain an operating permit, and properly operate and maintain the lagoon to prevent future discharges.

F. Assess against defendant all costs in these proceedings.

G. Grant such further relief as this Court deems just and proper.

Respectfully submitted,

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